

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A  
JUDGE, No. 03-14

Case No.: SC 04-1

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**MOTION TO SUPPLEMENT THE RECORD**

The Respondent, Judge James Henson, hereby moves the Commission for leave to supplement the record in this matter, prior to rendering a decision, by including and considering the sworn statement of Cathleen Sznerch attached hereto as Exhibit "A". As grounds herefor Respondent would show:

1. That Special Counsel for the Judicial Qualifications Commission in this matter is seeking removal of Judge Henson, the most severe sanction possible.

2. That throughout the hearing which was held on October 12th and 13th, 2004, there was conflicting testimony on many issues between the witnesses called up by the Commission and the witnesses called by Judge Henson.

3. That Judge Henson took the stand and testified under oath in his own defense. His credibility was thus placed in issue. Throughout his final argument, Special Counsel for the Commission attacked the Judge's credibility and urged the Commission to believe the Commission's witnesses and not the Judge.

4. That one of the witnesses called by the Commission was Assistant State Attorney Michael Saunders. Mr. Saunders was the prosecutor who represented the State of Florida in the case of the State v. Diana Jimenez. One of the issues was whether a plea offer was timely communicated to the defendant by Judge Henson.

5. On this issue Mr. Saunders testified that he spoke with the mother and husband of the victims, Cathleen Sznerch, in May of 2001 regarding defendant Diana Jimenez being pregnant.

6. Judge Henson testified that he did not know of Diana's pregnancy at the time, and hence did not and could not have told Mr. Saunders.

7. In closing argument (see transcript Page 566) Special Counsel argued that this should influence the Commission's consideration of Judge Henson's credibility.

8. Subsequent to the hearing, Mrs. Sznerch has executed a sworn statement indicating that she did not learn of Diana's pregnancy until the sentencing in October 2001.

9. Mrs. Sznerch's statement supports Judge Henson's testimony, and would impeach credibility of Assistant State Attorney Michael Saunders.

10. In fairness to Judge Henson, and in the interest of justice, the panel should be allowed to consider this sworn statement in making the decision, since this case involves a matter of credibility, and this bears directly upon the credibility of Michael Saunders as a witness, and Judge Henson as a witness.

WHEREFORE, the Respondent, Judge Henson, respectfully requests that this Commission allow consideration of Mrs. Sznerch's sworn statement attached hereto as Exhibit "A" and include this in the record of proceedings prior to a decision.

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Federal Express this 5<sup>th</sup> day of November, 2004 to MARK HULSEY, ESQ. and E. LANNY RUSSELL, ESQ., Special Counsel for the Florida Judicial Qualifications Commission, Smith Hulsey & Busey, 225 Water Street, Suite 1800, Jacksonville, Florida

32202; HONORABLE JAMES R. WOLF, CHIEF JUDGE, First District Court of Appeal, 301 S. Martin L. King, Jr. Blvd., Tallahassee, FL 32399-1850; THOMAS C. MACDONALD, JR., General Counsel, Judicial Qualifications Commission, 1904 Holly Lane, Tampa, FL 33629 and JOHN BERANEK, ESQ., Ausley & McMullen, P.A., 227 South Calhoun Street, P.O. Box 391, Tallahassee, Florida 32301.

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A handwritten signature in black ink, appearing to read 'Kirk N. Kirkconnell', is written over a horizontal line.

Kirk N. Kirkconnell, Esq.

Florida Bar No. 111988

10/29/04

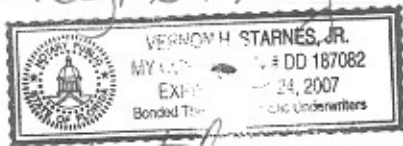
The only time I had contact with Jim Henson was at my deposition in North Carolina. Mike Saunders, Jim Henson, and I were present. At that time it was not mentioned that Diana Jimenez was pregnant by Jim Henson.

I did not know that Ms. Jimenez was pregnant or had a child until the day of our ~~trial~~ trial.

I was sitting outside Judge Whitehead's courtroom waiting to go in when Ms. Jimenez walked past me. Her mother was following behind Ms. Jimenez carrying a pink baby carrier.

At that time I asked Mike Saunders if Ms. Jimenez had a child. He replied that she had a daughter.

This was the first I knew of Ms. Jimenez's pregnancy and child.



Cathleen T. Starnes

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